

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
AT MEMPHIS

STEPHANIE ANNE GRAY, INDIVIDUALLY)
AND AS ADMINISTRATRIX OF THE)
ESTATE OF RONALD EARL GRAY, JR.,)
DECEASED,)
Plaintiff,) No. _____
v.) Removed from the Chancery
AETNA LIFE INSURANCE COMPANY,) Court of Shelby County,
Defendant.) Tennessee, 30th Judicial
) District at Memphis
) No. CH-11-0211-1

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, Defendant Aetna Life Insurance Company (“Defendant”), hereby provides notice of removal of this action from the Chancery Court of Shelby County, Tennessee, for the 30th Judicial District at Memphis.

1. On February 8, 2011, an action was commenced in the Chancery Court of Shelby County, Tennessee for the 30th Judicial District at Memphis, captioned Stephanie Anne Gray, Individually and as Administratrix of the Estate of Ronald Earl Gray, Jr., Deceased, Case Number CH-11-0211-1. A copy of all process and pleadings filed in the Chancery Court of Shelby County, Tennessee for the 30th Judicial District at Memphis and served upon Defendant is attached hereto as collective Exhibit 1 in accordance with 28 U.S.C. § 1446(b).

2. Defendant received notice of this action by service of process through the Commissioner of Insurance on February 18, 2011 and is filing this Notice of Removal within thirty (30) days after receiving notice of the Complaint. See 28 U.S.C. § 1446.

3. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, in that Plaintiff's claims are completely preempted by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq. "[A]ny state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy the exclusive [remedy] and is [] preempted." Aetna Health, Inc. v. Davila, 542 U.S. 200, 209 (2004); see Ramsey v. Formica Corp., 398 F.3d 421, 424 (6th Cir. 2005) (holding that "virtually all state laws relating to an employee benefits plan" are preempted by ERISA).

4. Here, Plaintiff alleges that the proceeds under an ERISA-covered plan should be paid to two beneficiaries even though only one beneficiary was listed on the policy. Complaint at ¶¶ 9-11. Plaintiff's claim will require the interpretation of an ERISA-covered plan, falls within the scope of ERISA's civil enforcement provision, Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), and is therefore preempted.

5. This action is therefore removable to this Court pursuant to the complete preemption exception to the well-pleaded complaint rule. Davila, 542 U.S. at 207-08; Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 66-67 (1987).

6. Contemporaneous herewith, a true and correct copy of this Notice of Removal will be filed with the Clerk of the Chancery Court of Shelby County, Tennessee for the 30th Judicial District at Memphis.

7. The venue of this removal action is proper pursuant to 28 U.S.C. §§ 1441(a) and (c) as the United States District Court for the Western District of Tennessee, embraces Shelby County, Memphis, Tennessee, the place where the state court action was pending.

8. Copies of this Notice of Removal, as well as the Notice of Filing of Notice of Removal, have been mailed to Plaintiff's counsel and are being filed with the Clerk of the Chancery Court of Shelby County, Tennessee for the 30th Judicial District at Memphis.

s/John E. B. Gerth

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Attorneys for Defendant Aetna Life Insurance Company

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice has been served via First Class Mail upon

John E. McManus, Esq.
Suite 601
6263 Poplar Avenue
Memphis, TN 38119

on this 18th day of March, 2011.

s/John E. B. Gerth _____